United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

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74-2226

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

ESTATE OF MORRIS R. SILVERMAN,
AVRUM SILVERMAN, Executor,

Appellant

v.

COMMISSIONER OF INTERNAL REVENUE,

Appellee

ON APPEAL FROM THE DECISION OF THE
UNITED STATES TAX COURT

BRIEF FOR THE APPELLEE

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STATEMENT OF THE ISSUES PRESENTED

1. Whether the Tax Court correctly found that the transfer by the decedent to his son of a policy of insurance on the life of the decedent, made about six months before the decedent's death, was made in contemplation of death within the meaning of Section 2035 of the Internal Revenue Code of 1954.

2. Whether the Tax Court correctly decided that the quantum of inclusion in the decedent's gross estate is that portion of the proceeds of the policy which is equal to the ratio of premiums paid by the decedent to the total premiums paid. Under the Tax Court's decision, $8,871 and not $10,000 (the proceeds) is the amount includable in the gross estate in respect to the policy.

STATEMENT OF THE CASE

This is an appeal by Avrum Silverman, executor of the estate of Morris R. Silverman (hereinafter taxpayer), from the decision of the United States Tax Court. The Tax Court determined that there is a deficiency in federal estate tax in the amount of $1,705.25. The Tax Court entered its decision on June 24, 1974, and the taxpayer filed a timely notice of appeal on August 26, 1974. The findings of fact and the opinion of the Tax Court (Honorable Samuel B. Sterrett) are reported at 61 T.C. 338. Jurisdiction is conferred on this Court by Section 7482 of the Internal Revenue Code of 1954.

Some of the facts were stipulated, and the pertinent facts, as found by the Tax Court, may be summarized as follows:

Morris R. Silverman (hereinafter the decedent) was 60 years old when he purchased, on May 25, 1961, a $10,000 insurance policy on his life which required that monthly premium payments of $52.60 be made. The decedent's wife, Mabel, was the primary beneficiary of the policy, and his son Avrum was secondary beneficiary. (Op. 3.)[1/] On November 18, 1961, the decedent executed a will under which his wife was to be the sole heir unless she predeceased the decedent, in which event the decedent's son would be his sole heir. (Ex. 1-A.)

1/ References are to the original documents filed in the Tax Court, some of which are reproduced in the separately bound record appendix.

Mabel died of cancer of the colon on December 12, 1965, after an extended illness of two or three years during which time she underwent several periods of hospitalization. (Op. 3.)

On December 22, 1965, it was stated in the decedent's medical history that he had been under a great deal of stress for several months, had noted intermittent red blood in his stools, and pain in his back. Further he had lost his appetite and had not slept well. (Op. 3.) On the same date, the decedent underwent a full physical examination. X-rays, apparently taken during the examination, indicated a possible malignancy of the colon. (Op. 4.)

On January 29, 1966, the decedent assigned to his son, Avrum, all of his right, title and interest in the life insurance policy which he had purchased in May of 1961. (Op. 4.) Prior to the assignment of the policy, the decedent had made all of the monthly premium payments of $52.60. (Op. 10.) After the transfer of the policy, his son made the remainder of the premium payments. Joseph Breitstone, the decedent's nephew and insurance broker, testified that the decedent had originally desired to cancel the policy after his wife's death. Nevertheless, Breitstone testified, he suggested that the decedent assign the policy instead because the policy would then no longer be part of the decedent's estate and the decedent's son would pay the premiums. (Tr. 33-35.)

Avrum testified that he and his father did not have a close relationship (Tr. 25) and that he would only receive gifts from his father of between $50 and $100 on certain holidays (Tr. 23).

On February 18, 1966, the decedent entered the hospital where he underwent surgery. During the operation, cancer of the colon and liver was found and a colostomy was performed. (Op. 4.) On March 12, 1966, the decedent was discharged from the hospital but was subsequently readmitted several times before his death on July 26, 1966. (Op. 4.)

In the estate tax return, taxpayer failed to include either the proceed value of the life insurance policy which his father had transferred to him or the value of certain jewelry which the decedent inherited from his wife. The Commissioner asserted a deficiency in estate taxes of $2,155.01 later reduced to $2,022.93. (Op. 1-2.)

The Tax Court determined that the life insurance policy was transferred in contemplation of death and that the portion of the face value of the life insurance policy which the decedent's premium payments bore to the total premium payments should be included in the gross estate. (Op. 11.) The Tax Court also determined that the decedent's gross estate must include the jewelry having a fair market value of $780 which the decedent inherited from his wife. (Op. 11.)[2/]

From this adverse decision, the taxpayer appeals.

2/ Taxpayer does not raise on appeal the issue of the inclusion of the jewelry in decedent's estate.

SUMMARY OF ARGUMENT

1. This estate tax case involves the question whether the transfer by the decedent to his son of a policy of insurance on the life of the decedent, was made in contemplation of death within the meaning of Section 2035 of the Internal Revenue Code and the applicable Regulations. This is of course a question of fact. Among those factors to be considered in making such a determination are: (1) the health of the decedent as he knew it, at the time of the transfer; (2) the interval between the transfer and the decedent's death; (3) the desire of the decedent to avoid estate taxes by making inter vivos gifts; (4) the existence of an established gift giving plan on part of the decedent; and (5) the relationship of the donee to the decedent, that is, whether the donee was a natural object of the decedent's bounty.

At age 65, ten days after his wife died of cancer of the colon, decedent underwent a complete physical examination which revealed the likelihood that he, too, had cancer of the colon. Shortly thereafter the decedent transferred the life insurance policy to his son. The decedent's son was his sole heir and this was reflected in the decedent's will. Although taxpayer contends that the transfer of the policy was prompted by life motives, it appears that one Breitstone, the decedent's nephew and insurance agent, advised the decedent to assign the policy rather than surrender it for its cash value, because his son would pay the premiums and the policy would no longer be part

of the decedent's estate. Decedent died approximately six months after the transfer. These facts coupled with the fact that decedent rarely made gifts to his son is ample evidence to support the Tax Court's finding that the decedent's dominant motive in transferring the policy was of the sort that leads to testamentary disposition, and not designed to achieve a purpose desirable to decedent if he continued to live.

2. The policy had a face value of $10,000, and that amount was paid to the decedent's son after the decedent died. Of the total premiums amounting to $3,261.20, the decedent had paid $2,893 or 88.71 percent, and the son had paid $368.20 or 11.29 percent. The Tax Court held that the decedent's estate must include that portion of the face value of the life insurance policy which the decedent's premium payments bore to all premium payments. Thus, $8,871 is the amount includable under the Tax Court's decision. It is believed that this is a fair result, and taxpayer's objections and criticisms are without merit. Indeed, this result is favorable to taxpayer, for there is room for argument that only the dollar amount of the premiums paid by him or $368.20, should be excluded, and that $9,631.80 ($10,000 less $368.20) should be included in the decedent's gross estate in respect to the policy. However, we do not wish to pursue that point here, and we are content to abide by the Tax Court's determination that the quantum of inclusion is $8,871.

The decision of the Tax Court should be affirmed.

ARGUMENT

I

THE TAX COURT CORRECTLY FOUND THAT THE TRANSFER BY THE DECEDENT TO HIS SON OF A POLICY OF INSURANCE ON THE LIFE OF THE DECEDENT, MADE ABOUT SIX MONTHS BEFORE THE DECEDENT'S DEATH, WAS MADE IN CONTEMPLATION OF DEATH

This estate tax case presents the question whether the decedent's assignment of a life insurance policy approximately six months before his death was a transfer in contemplation of death.

Section 2035(a) of the Internal Revenue Code of 1954, Appendix, infra, provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth) in contemplation of his death. Moreover, Section 2035(b) of the Code, Appendix, infra, provides that a transfer made within three years of death "shall, unless shown to the contrary, be deemed to have been made in contemplation of death."

While the term "contemplation of death" is not defined in the statute, the Regulations provide (Treasury Regulations on Estate Tax (1954 Code), Section 20.2035-1(c), Appendix, infra):

> (c) Definition. The phrase "in contemplation of death", as used in this section, does not have reference to that general expectation of death such as all

> persons entertain. On the other hand, its meaning is not restricted to an apprehension that death is imminent or near. A transfer "in contemplation of death" is a disposition of property prompted by the thought of death (although it need not be solely so prompted). A transfer is prompted by the thought of death if (1) made with the purpose of avoiding death taxes, (2) made as a substitute for a testamentary disposition of the property, or (3) made for any other motive associated with death. The bodily and mental condition of the decedent and all other attendant facts and circumstances are to be scrutinized in order to determine whether or not such thought prompted the disposition.

Thus, the meaning of the phrase "in contemplation of death" is not restricted to a fear that death is imminent but is rather that death must be contemplated in the sense that the motive which induces the transfer is of the sort which leads to a testamentary disposition. The purpose of the statute "is to reach substitutes for testamentary disposition and thus to prevent the evasion of the estate tax." United States v. Wells, 283 U.S. 102, 117 (1931); Milliken v. United States, 283 U.S. 15 (1931).

The presumption of Section 2035(b) is rebuttable, but it is incumbent upon the taxpayer to persuade the court that in transferring the property, the decedent's dominant motive was not associated with the distribution of property in anticipation of death, but was rather associated with purposes desirable to decedent if he continued to live. Reeves' Estate v. Commissioner,

180 F. 2d 829, 831 (C.A. 2, 1950), cert. denied, 340 U.S. 813 (1950); First Trust & Deposit Co. v. Shaughnessy, 134 F. 2d 940, 941 (C.A. 2, 1943), cert. denied, 320 U.S. 744 (1943); Bel v. United States, 452 F. 2d 683, 687 (C.A. 5, 1971), cert. denied, 406 U.S. 919 (1972). Since the nature of the decedent's motives in making the transfer is a question of fact in each case requiring the examination of the circumstances surrounding the transfer, Wells, p. 119; Allen v. Trust Co., 326 U.S. 630, 636 (1946), the findings of the Tax Court must be sustained unless "clearly erroneous." Commissioner v. Duberstein, 363 U.S. 278 (1960).

In the instant case, the evidence compels the conclusion that the decedent transferred the life insurance policy in contemplation of death. Many factors have been considered important in the determination of whether a transfer was made in contemplation of death. Among those to be considered are: (1) the health of the decedent, as he knew it, at the time of the transfer; (2) the interval between the transfer and the decedent's death; (3) the desire of the decedent to avoid estate taxes by making inter vivos gifts; (4) the existence vel non of an established gift giving plan on the part of the decedent; and (5) the relationship of the donee to the decedent, i.e., whether the donee was a natural object of the decedent's bounty. See e.g. Estate of Johnson v. Commissioner, 10 T.C. 680,

688 (1948). Here the decedent six months before his death from cancer transferred a life insurance policy to his son, the natural object of his bounty and the sole beneficiary under his will. Nevertheless, taxpayer asserts (Br. 10-11), that the transfer here was prompted by life motives and that the overwhelming evidence introduced in the Tax Court indicated that the transfer was not made in contemplation of death. Clearly this was not the case.

On December 12, 1965, the decedent's wife Mabel died of cancer of the colon. She had been ill for two or three years and had required hospitalization on several occasions during which time the decedent would visit her daily. (Op. 3; Tr. 28.) Ten days after his wife's death the decedent, age 65, underwent a full physical examination to find the cause of acute diarrhea and bleeding. X-rays taken on that date indicated that the decedent had a possible malignancy of the colon. (Op. 4, 7.) On January 29, 1966, the decedent assigned the life insurance policy on his life to his son. (Op. 4.) The decedent died on July 26, 1966. (Op. 4.) Thus it was shown that shortly after his wife's death the decedent, age 65, underwent a physical examination, the result of which indicated that he was suffering from cancer of the colon, as had his recently deceased wife. Shortly thereafter the decedent made the transfer in question. Bodily condition is highly significant in cases of the instant

type. See Gerard v. Commissioner, 57 T.C. 749 (1972), on appeal (C.A. 2); Lowndes, Kramer, McCord, Federal Estate and Gift Taxes (3d ed.) § 5.12, p. 83.

The taxpayer contends, however (Br. 7), that absent the medical evidence presented, there would have been no basis to conclude that the life insurance policy was transferred in contemplation of death. Moreover, he states (Br. 10), that the decedent "was solely concerned with a life motive to avoid having to continue the payment of premiums on his policy and to, instead, invest his money thus saved in the stock market." This assertion is contradicted by the testimony of Joseph Breitstone, the decedent's nephew and insurance agent, and the only witness dealing first hand with the decedent in respect of the life insurance policy. Although taxpayer quotes part of Breitstone's testimony in his statement of the case (Br. 5) he fails to quote the entire pertinent part (Tr. 33-35):

> Q. Was there any conversation between the two of you regarding the disposition of that policy which had been written--
>
> A. Yes, he wanted to cancel it.
>
> Q. Did he say that to you himself?
>
> A. Yes.
>
> Q. Did he give you any reason?
>
> A. He had no further need for the coverage.
>
> Q. Did he instruct you to cancel it?
>
> A. Yes.
>
> * * *

Q. Did you cancel it?

A. No.

Q. Did you then tell him what your [sic] proposed to do?

A. I recommended that I [sic] transfer ownership to his son. I said that his son would be responsible for the future premiums.

I said his son would receive the benefits of the policy and it would be outside of the estate and have no further interest in the policy, and his son--

Q. Did he do that on your recommendation?

A. Yes.

Moreover, in a letter to taxpayer's attorney (Ex. 4-E), Breitstone stated that he recommended transfer of the policy to Avrum since the estate would no longer reap the benefits of the marital deduction in the event of death. (Op. 4, 8.) Thus Breitstone's testimony and the decedent's actions, contrary to the taxpayer's assertions, indicate clearly that the decedent was motivated by the thought of death in making the gift of the policy to his son.

After his wife's death, the decedent's son was the decedent's closest relative and the natural object of his bounty. The son was the sole beneficiary and the executor under the will of the decedent. (Ex. 1-A.) These considerations, coupled with the fact that the decedent, except at certain holidays, never made gifts to his son (Tr. 23) certainly support the Tax Court's finding that the life insurance policy was transferred in

contemplation of death. And the testimony of the son to the effect that his social contacts with his father were unpleasant at times (Tr. 25-26) is not sufficient to indicate that the decedent had no paternal interest in his son or that the policy was not transferred in contemplation of death.

II

THE TAX COURT WAS LIBERAL TO THE ESTATE IN HOLDING THAT ONLY THE PORTION OF THE PROCEEDS OF THE POLICY WHICH WAS EQUAL TO THE RATIO OF PREMIUMS PAID BY THE DECEDENT TO THE TOTAL PREMIUMS PAID, SHOULD BE INCLUDED IN THE GROSS ESTATE

As stated above, decedent on January 29, 1966, transferred the life insurance policy to his son. The monthly premiums on this policy were $52.60 and at the time of the decedent's death, premiums totalling $3,261.20 had been paid. Prior to the assignment of the policy, decedent had paid a total of $2,893 or 88.71 percent of the premiums. Thereafter his son paid $368.20 or 11.29 percent. (Op. 10.) The Tax Court held (Op. 10-11) that only the portion of the proceeds of the policy which was equal to the ratio of premiums paid by the decedent to the total premiums paid, should be included in the gross estate. Although the Commissioner contended in the Tax Court that the full amount of proceeds ($10,000) should be included in the gross estate, we do not renew that contention here.

In contending that only the dollar amount of the premiums paid by the decedent within three years of his death should be included in the gross estate (Br. 11-14), taxpayer misconceives the applicable statutory and decisional law. If the decedent herein had paid all of the premiums on the policy (assuming, of course, that it was transferred in contemplation of death), then the entire proceed value ($10,000) would clearly be includable in his gross estate under Section 2035 of the Code. That is so because the policy matured upon the decedent's death, and the value at date of death is the amount includable. Bel v. United States, supra; Detroit Bank & Trust Co. v. United States, 467 F. 2d 964 (C.A. 6, 1972), cert. denied, 410 U.S. 929 (1973); First National Bank of Oregon v. United States, 488 F. 2d 575 (C.A. 9, 1973). See also Estate of Vanderlip v. v. Commissioner, 3 T.C. 358 (1944), aff'd, 155 F. 2d 152 (C.A. 2, 1946), cert. denied, 329 U.S. 728 (1946); Estate of Hull v. Commissioner, 38 T.C. 512, 528 (1962), rev'd on other grounds, 325 F. 2d 367 (C.A. 3, 1963).

Thus, as the Ninth Circuit stated in First National Bank of Oregon, supra, p. 577:

> The purpose of section 2035 "is to reach substitutes for testamentary dispositions and thus to prevent the evasion of the estate tax." * * * An insured pays the premiums on a life insurance policy in order to leave the proceeds to his beneficiaries; thus where a policy is both procured

> at the behest of the decedent within the statutory period and where all the premiums are paid by the deceased in contemplation of death, the gift must necessarily be one of the property interest in the policy. * * * In short, what is intended with the purchase of a life insurance policy in circumstances like these is the passing of the proceeds at death. That is the equivalent of a testamentary disposition, and its taxation is precisely the object of section 2035.

The court went on to note that if only the premium payments and not the proceed value of the policy were to be included in the gross estate, an anomalous exception to Section 2035 would be created in the case of life insurance policies. As the court stated (First National Bank of Oregon, pp. 577-578):

> The normal rule under section 2035 is that property transferred in contemplation of death is valued as of the decedent's death, not as of the date the property was transferred. * * * But taxing only the premiums paid on life insurance as gifts in contemplation of death would mean ignoring the increase in value the premiums purchased--namely the value of the proceeds.

In asserting that only the dollar amount of the premium payments made by decedent within three years of his death rather than a proportion of the policy's proceed value should be included in the gross estate, taxpayer cites as support for this proposition (Br. 11-13) cases such as Bintliff v. United States, 462 F. 2d 403 (C.A. 5, 1972); First National Bank of Midland Texas v. United States, 423 F. 2d 1286 (C.A. 5, 1970); Estate of Coleman

v. Commissioner, 52 T.C. 921 (1969). These cases, however, all involved situations where an insurance policy had been transferred without the three-year period prescribed in Section 2035, and not a situation where the policy itself was transferred within that period. In Bel, supra, the Fifth Circuit recognized this factual difference and held Coleman and First National Bank of Midland to be inapposite because the policies in those cases had been procured more than three years prior to the death of the decedent and the payments within the three-year period served only to keep the economic substance of ownership of the policy alive. Similarly, the court found that Gorman v. United States, 288 F. Supp. 225 (E.D. Mich.. 1968), cited by taxpayer (Br. 13), was wrongly decided. Accord: Detroit Bank & Trust Co. v. United States, supra; First National Bank of Oregon v. United States, supra. Here, of course, the decedent transferred the policy within three years of his death and thus he transferred more than the value of the premium payments--indeed, he transferred the right to receive the full proceed value of the policy on his death. Yet, the premium payments made by the decedent's son after the policy had been transferred cannot lightly be ignored. Liebmann v. Hassett, 148 F. 2d 247 (C.A. 1, 1945), cited by the Tax Court herein (Op. 10), dealt with a situation similar to that presented here. There the court held that the proceeds should be allocated on the basis that each

premium payment purchased an interest in the policy and consequently in the proceeds. It is true that in Liebmann the court was concerned with one earlier statute under which the premium payment test was authorized, whereas that test is not sanctioned under the present Code as an independent generating force for the includability of insurance proceeds. Cf. Estate of Skifter v. Commissioner, 468 F. 2d 699, 702 (C.A. 2, 1972). In the circumstances, the Commissioner might well contend that only the dollar amount of the premiums paid by the son in the instant case ($368.20) should be excluded, and that $9,631.80 ($10,000 less $368.20) should be included in the decedent's gross estate in respect to this policy. Cf. Rev. Rul. 71-497, 1971-2 Cum. Bull. 329; Estate of Peters v. Commissioner, 386 F. 2d 404 (C.A. 4, 1967). However, we do not wish to pursue that point here, and we do not oppose the Tax Court's application of the Liebmann rationale to the instant case. We would add, however, that this seems to be a liberal disposition in taxpayer's favor, and we believe that he has no ground for complaint.

Finally, taxpayer argues alternatively (Br. 14) that only the cash surrender value of the policy at the time it was transferred should be included in the gross estate. Yet, Section 2035 provides for the inclusion in a decedent's gross estate of the value, at the time of death, of property which had been transferred in contemplation of death. Thus, the value at the time of assignment is not controlling. Heiner v. Donnan,

285 U.S. 312, 330 (1932). Moreover, the value of a policy, for purposes of the contemplation of death statute, is the value of the entire bundle of rights under the policy, and is not limited to the cash surrender value. Estate of Hull, supra, 38 T.C., p. 529; and cf. Guggenheim v. Rasquin, 312 U.S. 254, 257 (1941). Rather than transferring just the benefits which he could obtain and enjoy while living, such as the right to surrender the policy for its cash value, the decedent transferred all the incidents of ownership and all rights under the policy. It is the date-of-death value of this bundle of rights which should be included in the decedent's gross estate, that is, $10,000 less the amount attributable to the premium payments made by the son.

CONCLUSION

For the reasons stated above, the decision of the Tax Court should be affirmed.

Respectfully submitted,

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APRIL, 1975.

CERTIFICATE OF SERVICE

It is hereby certified that service of this brief has been made on opposing counsel by mailing four copies thereof on this 14th day of April, 1975, in an envelope, with postage prepaid, properly addressed to him as follows:

Moses M. Cohen, Esquire
276 Fifth Avenue
New York, New York 10001

Gilbert E. Andrews/enk

GILBERT E. ANDREWS,
ATTORNEY.

APPENDIX

Internal Revenue Code of 1954 (26 U.S.C.):

SEC. 2035. TRANSACTIONS IN CONTEMPLATION OF DEATH.

(a) [as amended by Sec. 18(a), Revenue Act of 1962, P.L. 87-834, 76 Stat. 960] General Rule.--The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, in contemplation of his death.

(b) Application of General Rule.--If the decedent within a period of 3 years ending with the date of his death (except in case of a bona fide sale for an adequate and full consideration in money or money's worth) transferred an interest in property, relinquished a power, or exercised or released a general power of appointment, such transfer, relinquishment, exercise, or release shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this section and sections 2038 and 2041 (relating to revocable transfers and powers of appointment); but no such transfer, relinquishment, exercise, or release made before such 3-year period shall be treated as having been made in contemplation of death.

Treasury Regulations on Estate Tax (1954 Code) (26 C.F.R.):

§ 20.2035-1 Transactions in contemplation of death.

* * *

(c) Definition. The phrase "in contemplation of death", as used in this section, does not have reference to that general expectation of death such as all persons entertain. On the other hand, its meaning is not restricted to an apprehension that death is imminent or near. A transfer "in contemplation of death" is a disposition of property prompted by the thought of death (although it need not be solely so prompted). A transfer is prompted by the thought of death if (1) made with the purpose of avoiding death taxes, (2) made as a substitute for a testamentary disposition of the property,

or (3) made for any other motive associated with death. The bodily and mental condition of the decedent and all other attendant facts and circumstances are to be scrutinized in order to determine whether or not such thought prompted the disposition.

* * *

(e) Valuation. The value of an interest in transferred property includible in a decedent's gross estate under this section is the value of the interest as of the applicable valuation date. In this connection, see sections 2031, 2032, and the regulations thereunder. However, if the transferee has made improvements or additions to the property, any resulting enhancement in the value of the property is not considered in ascertaining the value of the gross estate. Similarly, neither income received subsequent to the transfer nor property purchased with such income is considered.

§ 20.2042-1 Proceeds of life insurance.

(a) In general. * * *

(2) Proceeds of life insurance which are not includible in the gross estate under section 2042 may, depending upon the facts of the particular case, be includible under some other section of part III of subchapter A or chapter 11. For example, if the decedent possessed incidents of ownership in an insurance policy on his life but gratuitously transferred all rights in the policy in contemplation of death, the proceeds would be includible under section 2035. * * *

* * *

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

April 14, 1975

SPC:GEA:JSBlum:cnp
5-13124

A. Daniel Fusaro, Esquire
Clerk, U.S. Court of Appeals
for the Second Circuit
Room 1702, U.S. Courthouse
Foley Square
New York, New York 10007

Re: Estate of Morris R. Silverman, Avrum Silverman, Executor v. Commissioner (C.A. 2 - No. 74-2226)

Dear Mr. Fusaro:

We are transmitting herewith for filing with your Court twenty-five copies of the brief on behalf of the Appellee in the above-entitled case.

We are forwarding four additional copies to counsel for the Appellant, together with a copy of this letter.

Sincerely yours,

SCOTT P. CRAMPTON
Assistant Attorney General
Tax Division

Gilbert E. Andrews/cnh

By:
GILBERT E. ANDREWS
Chief, Appellate Section

Enclosures

cc: Moses M. Cohen, Esquire
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